



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
WINFRIED GUELDNER )

For Appellant: Winfried Gueldner,  
in pro. per.

For Respondent: Terry Collins  
Counsel

O P I N I O N :

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Winfried Gueldner for refund of personal income tax in the amount of **\$356.00** for the year 1976.

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The question presented is whether appellant's claim for refund is barred by the statute of limitations.

Appellant filed his 1976 California personal income tax return on May 15, 1981. The return reflected a self-assessed tax liability of \$225.00, claimed a withholding credit of \$581.00, and requested a refund of the \$356.00 difference. Respondent disallowed the refund claim, however, on the grounds that it had not been filed within the time limits prescribed by Revenue and Taxation Code section 19053.

Section 19053 provides, in pertinent part:

No credit or refund shall be allowed or made after four years from the last day prescribed for filing the return or after one year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period a claim therefor is filed by the taxpayer, . . .

The last day prescribed for filing a timely 1976 return was April 15, 1977. (Rev. & Tax. Code, § 18432.) Four years from that date expired on April 15, 1981. For purposes of section 19053, tax which is paid by withholding is considered to have been paid on the last day prescribed for payment of the tax for that year. (Rev. & Tax. Code, § 18551.1, subd. (b).) In this case, appellant's 1976 tax was required to be paid on April 15, 1977. One year from that date ended on April 15, 1978. Under the provisions of section 19053, therefore, appellant's refund claim could not be allowed unless it was filed by April 15, 1981. Since appellant's return claiming the refund was not filed until May 15, 1981, respondent properly denied the refund claim for untimeliness.

Appellant contends, however, that his failure to file a timely claim should be excused because of the severe personal and financial difficulties he was experiencing during the late 1970s. This claim of extenuating circumstances is an issue that we have encountered on several occasions in the past. (See, e.g., Appeal of Wendell Jenkins, Sr., Cal. St. Bd. of Equal., June 23, 1981; Appeal of George Harrold, Jr., Dec., and Dorothy Harrold, Cal. St. Bd. of Equal., June 30, 1980.) As we said in the Appeal of Wendell Jenkins, Sr., supra, we have consistently held that the statute of limitations set forth in section 19053 must be strictly construed, and that the taxpayer's failure, for whatever reason, to file his refund claim within the statutory period bars him from doing so at a later date,

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For the above reasons, respondent's action in this matter must be sustained.

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OR D E R

Pursuant to the **views** expressed in the opinion of the board on file in this **proceeding**, and good cause appearing **therefor**,

IT IS HEREBY ORDERED; ADJUDGED AND DECKED, pursuant to section 19060 of the Revenue and **Taxation** Code, that the action of the Franchise Tax Board in denying the claim of **Winfried** Gueldner for refund of **personal** income tax in the amount of **\$\$356.00** for the year 1976, be and the **same** is **hereby** sustained.

Done at Sacramento, California, this **17th** day of August , **1982**, by the State Board of **Equalization**, **with** Board **Members** Mr. Bennett, Mr. Collis, Mr. **Dronenburg** and Mr. Nevins present.

William M. Bennett , Chairman  
Ernest J. Dronenburg, Jr. , Member  
Richard Nevins , Member  
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